

REMARKS

Applicant has carefully reviewed and considered the latest communications from the US Patent Office. In response, Applicant has amended claims 1, 4, 6, 16, and 21-25 to more particularly point out and distinctly claim the subject matter of the disclosed invention. In light of the amendment to these claims, and the argument presented below, Applicant believes this application to be in condition for allowance, and requests the issuance of a timely notice of allowance.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as anticipated by Nelson (USPN 6,347,027). Nelson discloses a method and apparatus for controlling an electric power distribution system including the use and coordination of information conveyed over communications means to dynamically modify the protection characteristics of distribution devices. Nelson also discloses the use of a power supply capable of converting 120V AC line power into 5V, 12V, and 24V DC power for the use of various functional blocks within a node of Nelson's invention. Nelson, FIG. 2. One of the functional blocks powered by the power supply is entitled "Digital I/O Interface." Nelson, FIG. 2, Element 216. This functional block interfaces with a distribution switch via "Control Outputs," which are illustrated as relay outputs. *Id.* Logically, the output of one of these relays is powered by either the AC input voltage or one of the DC voltages generated within the power supply; i.e.; 120 VAC or 5V, 12V or 24V DC. See interplay of Nelson, FIG. 2, Element 222 and Element 216. However, Nelson never mentions the voltage level of the "Control Outputs" to be adaptable to different reclosers; for instance; by being selectable from the different voltage levels shown in Nelson's FIG. 2.

Nelson does mention that a preferred embodiment of Nelson's disclosed invention is compatible with different recloser controls. Nelson, Col. 30, Lines 19-23. However, this

preferred embodiment states that the only interface between the add-on board and the recloser is based on digital communications. Nelson, Col. 30, Lines 36-38. Further, Nelson elaborates on digital communications by illustrating that he means a standard digital communications protocol over a communications port. Nelson, Col. 30, Lines 38-49.

One may argue that the disclosed goal of Nelson's preferred embodiment to communicate with different reclosers may be accomplished not only by using different digital communications protocols, but also through the use of a relay coupled to different voltage sources. As stated earlier, Nelson never mentions the voltage level of the "Control Outputs" shown in FIG. 2 to be selectable from the different voltage levels. Therefore, this rejection must rely on an inherent anticipation argument.

In *Akamai Technologies, Inc. v. Cable & Wireless Internet Services, Inc.*, the Federal Circuit stated that "a claim limitation is inherent in the prior art if it is *necessarily* present in the prior art, not merely probably or possibly present." *Akamai Technologies, Inc. v. Cable & Wireless Internet Services, Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003)(emphasis added). The doctrine of inherent anticipation requires that a claim limitation be necessary for the prior art to accomplish its objectives; the mere probability of the presence of the limitation does not suffice. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1297 (Fed. Cir. 2002) ("Inherency does not embrace probabilities or possibilities."). In this case it is clear that other techniques could be used by the invention of Nelson to interface with various reclosers; Nelson discloses such a technique when he discusses the use of a digital communications protocol to communicate between his disclosed apparatus and different reclosers. In addition, the relay outputs disclosed in the apparatus of Nelson's FIG. 2 would work adequately with voltage levels that were not adjustable if they were used to interface with different reclosers; different versions of the

apparatus could be produced for different types of reclosers, and no adjustability in the voltage level would be required. Therefore, Applicant respectfully submits that a rejection based on inherent anticipation cannot be sustained.

CONCLUSION

Applicant respectfully submits that in view of the amendments to the claims and the argument submitted, this application is now in condition for allowance. Applicant therefore requests issuance of a timely notice of allowance. However, should Examiner be of the opinion that further amendment or response is required; Applicant encourages Examiner to contact the undersigned attorney at the telephone number set forth below. Further, although no additional fees are believed to be due at this time, the Commissioner is authorized to charge any additional fees or deficiencies or credit any overpayments to Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd., Deposit Account No. 50-1039 with reference to attorney docket number (1444-0097).

Respectfully submitted,

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